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Marquis-Stevens, Inc. and Upstate New York Regional Council of Carpenters, Carpenters Local 19. Case 34-CA-9410

June 7, 2001

DECISION AND ORDER

BY CHAIRMAN HURTGEN AND MEMBERS TRUESDALE
AND WALSH

On a charge filed by Upstate New York Regional Council of Carpenters, Carpenters Local 19, on August 31, 2000, the General Counsel of the National Labor Relations Board issued a complaint on February 27, 2001, against Marquis-Stevens, Inc. (the Respondent), alleging that it has violated Section 8(a)(1) and (5) of the National Labor Relations Act (the Act). Although properly served copies of the charge and complaint, the Respondent failed to file an answer.¹

On April 27, 2001, the General Counsel filed a Motion for Summary Judgment with the Board. On May 1, 2001, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively notes that unless an answer is filed within 14 days of service, all the allegations in the complaint will be considered admitted. Further, the undisputed allegations in the Motion for Summary Judgment disclose that the Region, by letter dated April 6, 2001, sent by facsimile transmission and regular mail, notified the Respondent that unless an answer were received by April 13, 2001, a Motion for Summary Judgment would be filed. In the absence of good cause being shown for the failure to file a timely

¹ Although the copy of the complaint which was sent to the Respondent by certified mail was returned to sender "unclaimed," the Respondent's failure or refusal to claim certified mail cannot serve to defeat the purposes of the Act. See *Michigan Expediting Service*, 282 NLRB 210 fn.6 (1986). Another copy of the complaint was served on the Respondent by regular mail.

answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a Pennsylvania corporation, with an office and place of business in Larksville, Pennsylvania, and a jobsite in Fort Montgomery, New York, has been engaged as a contractor in the construction industry. During the 12-month period ending January 31, 2001, the Respondent, in conducting its business operations, performed services valued in excess of \$50,000 in States other than the Commonwealth of Pennsylvania. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

At all material times, Joseph Slivinski has held the position of manager and has been a supervisor of the Respondent within the meaning of Section 2(11) of the Act and an agent of the Respondent within the meaning of Section 2(13) of the Act.

At all material times, Construction Contractors Association of the Hudson Valley, Incorporated (the Association), has been an organization composed of various employers engaged in the construction industry, one purpose of which is to represent employers in negotiating and administering collective-bargaining agreements with various labor organizations, including the Upstate New York Regional Council of Carpenters (the Union). The Association and the Union are parties to a collective-bargaining agreement (the association agreement) effective by its terms from the period June 1, 1999, until May 31, 2002, providing for the recognition of the Union as the sole and exclusive collective-bargaining representative of all carpenters, mill wrights, and pile drivers employed by the employer-members of the Association and other employers who sign the association agreement. On about March 5, 2000, the Respondent signed the association agreement, thereby agreeing to be bound to all its terms and conditions.

The employees of the Respondent in the classifications described above constitute a unit appropriate for purposes of collective bargaining within the meaning of Section 9(b) of the Act.

At all material times, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the unit.

By letter dated June 7, 2000, the Union requested that the Respondent furnish it with the following information:

(a) the names, hours worked (including overtime) and rate of pay for all employees working at the Holiday Inn, Fort Montgomery, New York, under the employment of Marquis-Stevens, Inc;

(b) copies of all existing contracts with Mr. Patel (owner) pertaining to the Holiday Inn, Fort Montgomery, New York, and any other agreements with said owner; and

(c) names, addresses, telephone numbers and copies of contracts of all sub-contractors hired by Marquis-Stevens, Inc., to perform work within The Upstate New York Regional Council jurisdictional area.

The information requested by the Union is necessary for and relevant to the Union's performance of its duties as the exclusive collective-bargaining representative of the unit employees.

Since on or about June 7, 2000, the Respondent has failed and refused to furnish the Union with the requested information.

CONCLUSION OF LAW

By the acts and conduct described above, the Respondent has been failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has failed to provide the Union information that is relevant and necessary to its role as the exclusive collective-bargaining representative of the unit employees, we shall order the Respondent to furnish the Union with the names, hours worked (including overtime), and rate of pay for all employees working at the Holiday Inn, Fort Montgomery, New York, under the employment of Marquis-Stevens, Inc; copies of all existing contracts with Mr. Patel (owner) pertaining to the Holiday Inn, Fort Montgomery, New York, and any other agreements with said owner; and the names, addresses, telephone numbers, and copies of contracts of all subcontractors hired by Marquis-Stevens, Inc., to perform work within the Upstate New York Regional Council jurisdictional area.

ORDER

The National Labor Relations Board orders that the Respondent, Marquis-Stevens, Inc., Larksville, Pennsylvania, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to provide necessary and relevant information to the Union, on request.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Furnish to the Union in a timely manner the names, hours worked (including overtime), and rate of pay for all employees working at the Holiday Inn, Fort Montgomery, New York, under the employment of Marquis-Stevens, Inc; copies of all existing contracts with Mr. Patel (owner) pertaining to the Holiday Inn, Fort Montgomery, New York, and any other agreements with said owner; and the names, addresses, telephone numbers, and copies of contracts of all subcontractors hired by Marquis-Stevens, Inc., to perform work within the Upstate New York Regional Council jurisdictional area.

(b) Within 14 days after service by the Region, post at its facility in Larksville, Pennsylvania, and at its jobsite in Fort Montgomery, New York, copies of the attached notice marked "Appendix."² Copies of the notice, on forms provided by the Regional Director for Region 34, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since June 7, 2000.

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

² If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

Dated, Washington, D.C. June 7, 2001

Peter J. Hurtgen, Chairman

John C. Truesdale, Member

Dennis P. Walsh, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT fail and refuse to provide necessary and relevant information to the Union, on request.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL furnish to the Union in a timely manner the names, hours worked (including overtime), and rate of pay for all employees working at the Holiday Inn, Fort Montgomery, New York, under our employment; copies of all existing contracts with Mr. Patel (owner) pertaining to the Holiday Inn, Fort Montgomery, New York, and any other agreements with said owner; and the names, addresses, telephone numbers, and copies of contracts of all subcontractors hired by us, to perform work within the Upstate New York Regional Council jurisdictional area.

MARQUIS-STEVENSON, INC.